reached. See notes L. R. A. 1918C, 340; Foxworthy *v.* Adams (Ky.) 27 L. R. A. (N. S.) 308; Estate of Taylor (Pa.) 18 L. R. A. 855. Until the money was actually paid over or transferred from Liveson's account to that of the plaintiff by the drawee bank the gift, whether it be regarded as inter vivos or causa mortis, would be revocable, and after the death of Liveson the whole transaction would have stood legally as an incomplete gift, entirely unenforceable at law or in equity. Provident, etc., *v.* Sisters, etc., supra. 'To constitute a valid gift inter vivos, the purpose of the donor to make the gift must be clearly and satisfactorily established, and the gift must be complete by actual, constructive or symbolical delivery, without power of revocation.' 20 Cyc. 1193. In order to accomplish this, 'there must be a parting by the donor with all present and future legal power and dominion over the property.' 20 Cyc. 1196; Tracy *v.* Alvord, 118 Cal. 654, 50 Pac. 757; Pullen *v.* Placer County Bank, 138 Cal. 169, 66 Pac. 740, 71 Pac. 83, 94 Am. St. Rep. 19; Simmons *v.* Savings Society, 31 Ohio, 457, 27 Am. Rep. 521. That the law of this state is as stated in the Provident Case, supra, will be seen by a perusal of that and the other cases cited therein, citing and quoting from the Califofrnia cases at length.

"As the result, therefore, of our own independent search, we are confident that 'the great weight of authority supports the proposition that one cannot make his own check * * * the subject of a gift, so that, in the absence of payment, it can be enforced against the donor or his representatives." Foxworthy *v.* Adams, supra, 136 Ky. 403, 124 S. W. 381, 27 L. R. A. (N. S.) 308 and note thereunder.

"It may be conceded that the record here discloses sufficient facts so that we may infer that it was really the intention of the deceased to make a gift of the money on deposit in the bank, to the extent of $4,000 to plaintiff. Still, as was said in the case of Noble *v.* Garden, 146 Cal. 225, 79 Pac. 883, 2 Ann. Cas. 1001, 'however much we may desire to carry out the intentions of deceased, we cannot do so in this case, because the effect would be to hold valid an oral testamentary disposition of her property,' which, under the authorities, as we have seen, cannot legally be done."

Inns and Innkeepers—What Constitutes a Restaurant.—In Manesis *v.* Sulunias, 103 S. E. 459, the Supreme Court of Georgia held that where, by the terms of a storehouse lease, it is provided that the premises cannot be used as a "restaurant," and it appears that the lessee is using the same for serving "wienerwursts, frankfurters, hamburgers, bread, cold drinks, and pies," a judgment granting a temporary injunction against such use of the premises is not erroneous.

The court said: "'A restaurant is generally understood to be a

place where refreshments, food, and drink are served. Whether they are served to guests seated at a table, or on stools at a counter, does not affect the definition; that being a mere detail in the operation of the restaurant.' State *v.* Shoaf (N. C.) 102 S. E. 705, and authorities cited. In the case cited the evidence showed that the premises were used for serving wieners, sandwiches, and the like to guests seating themselves on stools near a counter; there being no tables. In the present case the undisputed evidence shows that no seats were provided, at tables or otherwise. The mere matter of providing guests with seats cannot change the character of the place of business, which must be determined by the character of the business carried on; the essential and characteristic features of a restaurant unquestionably being the serving of food and drink. It is insisted by the defendant that the plaintiff gave him permission to conduct his wiener stand upon the leased premises. The contrary is alleged by the plaintiff, and it was within the discretion of the trial judge to find in favor of either on this point.

"Judgment affirmed."

Negligence; Unguarded Poisonous Pool Attractive to Children.—In United Zinc and Chemical Company *v.* Britt, 264 Fed. 785, the U. S. Circuit Court of Appeals for the Eighth Circuit held that where the inclosure around a tract of land formerly used for manufacturing purposes had fallen away, so that the public were free to go at will and had made footpaths across it, if a pool of water impregnated with poisonous chemicals was attractive to boyish instincts and impulses as a place to go in bathing, and boys yielding to such impulses were killed by the poisons, it was immaterial whether the boys saw or could see the pool before they entered upon the land.

The court said in part: "It is also urged as error that the weight of the evidence disclosed that the pool could not have been seen by one off the premises standing in the nearest highway, or on the boundary line, or in the paths, and that the court told the jury that it was immaterial whether the boys saw it before they went upon the tract or after they were on it. In this the court doubtless had in mind two things, first, the undisputed fact that the public passed over it at will, so much so as to beat foot-paths across it, the further fact of its nearness to the homes of families, and second, the principle of law applied in cases like this that children of tender years are not classed with idlers, licensees or trespassers. 2 Shearman & Redfield on Negligence, sec. 705. In Pekin *v.* McMahon, 154 Ill., 141, 39 N. E., 484, 27 L. R. A., 206, 45 Am. St. Rep., 114, it is said:

" 'Although a child of tender years, who meets with an injury upon the premises of a private owner, may be a technical trespasser, yet the owner may be liable, if the things causing the injury have